

REPRESENTATIVE FOR PETITIONER:

None

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MILTON BROWN,	)	Petition No.:	71-026-04-2-8-00001
)		
Petitioner	)	Parcel No.:	18-2094-3529 ¹
)		
v.)		
	)	County:	St. Joseph
ST. JOSEPH COUNTY PROPERTY))		
TAX ASSESSMENT BOARD OF )	)	Township:	Portage
APPEALS,)		
)		
Respondent.	)	Assessment Year:	2004

Appeal from the Final Determination of
St. Joseph Property Tax Assessment Board of Appeals

June 25, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ That is the parcel number that Mr. Brown used on his Form 132 petition and his Form 136 exemption application. It appears that the state parcel number is 71-08-03-258-004-000-026. *See Bd. Exs. A, E.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The petitioner, Milton Brown, did not appear at the Board's hearing to present evidence in support of his exemption claim. But the St. Joseph Property Tax Assessment Board of Appeals ("PTABOA") conceded that the property should be granted 100% exemption. The Board accepts that concession.

PROCEDURAL HISTORY

2. On May 5, 2004, Mr. Brown filed a Form 136 Application for Property Tax Exemption with the St. Joseph County Assessor, requesting a 100% property tax exemption on both real and personal property. On his application, Mr. Brown left the line provided for indicating the assessment date blank. At the top of the application, however, in what appears to be someone else's handwriting, the "year filing for" is listed as "2004-2005." *Bd. Ex. A.* On January 27, 2005, the PTABOA issued its determination denying Mr. Brown's application. The PTABOA's determination indicates, perhaps erroneously, that it applies to the March 1, 2003 assessment date.
3. On February 7, 2005, Mr. Brown filed a Form 132 petition with the Board. On his petition, Mr. Brown listed the years of appeal as 2003, 2004, and 2005. Because Mr. Brown's original application was not timely for a 2003 appeal,² the Board determined that his appeal was for the March 1, 2004 assessment date.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On February 4, 2013, the Board mailed a hearing notice to Mr. Brown at 1048 North O'Brien, South Bend, Indiana, which the Form 132 petition lists as the address for both the subject property and Mr. Brown. The notice scheduled a hearing for March 28, 2013.

² An exemption application must be filed by May 15 of the assessment year in question. Ind. Code § 6-1.1-11-3(a).

That hearing notice, however, was returned to the Board as undeliverable with a label affixed to the envelope indicating that there was “no such number.” *Bd. Ex. B.*

5. The Board then mailed a hearing notice to P.O. Box 11566, South Bend, Indiana. An attachment to Mr. Brown’s Form 132 petition listed that as the address for Early Childhood Crime Prevention, the entity that Mr. Brown alleged was using the subject property for charitable purposes. The Board also sent a pre-hearing order to 1145 North O’Brien in South Bend, which Mr. Brown listed as his address on his exemption application. Both the notice and pre-hearing order were returned to the Board as undeliverable. *Id.* Mr. Brown did not contact the Board at any time after filing his petition to report a change of address.
6. On March, 28, 2013, the Board held an administrative hearing through its designated Administrative Law Judge, Joseph Stanford (“ALJ”). Mr. Brown neither appeared at the hearing nor contacted the Board or the ALJ to request a continuance.
7. Frank Agostino appeared as counsel for the PTABOA. Mr. Agostino said that he had met with Mr. Brown and spoke with him several times on the telephone about Mr. Brown’s appeal. From those conversations, Mr. Agostino concluded that the subject property was used for early childhood crime prevention which he conceded was a charitable and educational purposes. The PTABOA therefore conceded that the subject property should be granted a 100% exemption. Mr. Agostino offered Mr. Brown a written “Stipulation and Settlement Agreement,” but they were unable to meet again before the hearing for Mr. Brown to sign it. *See Bd. Ex. E.*
8. The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – Form 132 petition and underlying exemption application
 - Board Exhibit B – Hearing notices
 - Board Exhibit C – Hearing sign-in sheet
 - Board Exhibit D – Order Regarding Conduct of Exemption Hearing
 - Board Exhibit E – “Stipulation and Settlement Agreement”

ADMINISTRATIVE REVIEW AND A PETITIONER'S BURDEN

9. As a general proposition, all tangible property in Indiana is subject to property taxation. Ind. Code § 6-1-1-2-1. Nevertheless, property that is owned, occupied, and used for educational, scientific, literary, or charitable purposes may be exempted from taxation. I.C. § 6-1.1-10-16. To qualify for this exemption, the property must be predominantly used or occupied for one or more of the listed purposes. I.C. § 6-1.1-10-36.3. A taxpayer seeking exemption bears the burden of proving that the requirements for exemption are satisfied. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004); *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Ass'n of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

DISCUSSION

10. Mr. Brown failed to appear for the hearing despite the Board having mailed written notice to him at the addresses provided on his Form 132 petition and exemption application. Mr. Brown similarly failed to provide the Board with a change of address. *See* 52 IAC 2-3-3(e)(requiring a taxpayer to provide written notification to the Board of any address change).
11. Generally, a petitioner's failure to appear at a scheduled hearing constitutes the basis for default or dismissal of his appeal petition. 52 IAC 2-10-1(a). Here, though, the PTABOA conceded that the subject property was entitled to a 100% exemption for the March 1, 2004 assessment date. That is the remedy that Mr. Brown requested on his Form 132 petition. The Board accepts the PTABOA's concession.

SUMMARY OF FINAL DETERMINATION

12. Based on the PTABOA's concession, the Board finds that the subject property is 100% exempt from property taxation for the March 1, 2004 assessment date.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>